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ABSTRACT

This paper was part of a symposium focusing on collective bargaining as a generic process, and labor relations policy and practice as each affects allocation of resources at various educational organization levels. A set of propositions are developed to show that collective bargaining principles remain the same irrespective of sector, industry, or occupation. Using the strike issue and the question of management prerogatives to demonstrate how to learn from other industries, the authors argue for a generic approach to the study of industrial relations, based on the propositions that unions arise out of the employment relationship; unions achieve their goals by exercising power; and the output of collective bargaining relationship is dependent on the application of power to resolving the issues. (Author/MLF)

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Education Collective Bargaining - Sui Generis?

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EDUCATION COLLECTIVE BARGAINING: SUI GENERIS?*

As public sector collective bargaining thrust itself into the public consciousness, students of industrial relations rushed to study this phenomenon to see whether the paradigm based on private sector activity fit the new fact situation. The consensus to date has been that it does not. Public sector bargaining warrants a separate paradigm, it is argued, because there appear to be sufficient differences in the processes between the two sectors to warrant one, and because the normative aspects of the relationship play a stronger role in the public sector. In this paper we register a mild dissent by arguing for a generic theory of collective bargaining. It is appropriate that the AERA be the site of this discussion, since it was the seminal paper by Moskow and McLennan on multilateral bargaining in education which helped to establish a public sector paradigm.

THE PUBLIC AND PRIVATE SECTOR BARGAINING MODELS COMPARED

Collective bargaining in the private sector is viewed as a bilateral process in which labor and management exercise power against one another through the use of economic weapons in an economic environment. Students of industrial relations quickly noted that the public sector did not conform either to strict bilateralism, nor were all of the weapons employed in the process of an economic variety. For example, union negotiators frequently used the electoral and legislative political processes to further their ends. Observers at first concluded that these were unfair tactics on the part of the union, because they violated the private sector paradigm of bilateralism. Moskow and McLennan, however, documented this behavior in education collective bargaining in Pennsylvania, showing that it was a regular aspect of bargaining in the public sector and calling it multilateral bargaining to distinguish it from the private sector practice. Kochan, studying firefighters nation wide, expanded the concept of multilateral bargaining to include the unions

* This paper has benefited from the comments of Anthony M. Cresswell.

exploitation of differential roles, perceptions, and attitudes within the structure of management. Juris and Feuille in a 22 city study of police unionism showed that multilateral bargaining was an even more comprehensive concept, involving the exploitation of all sources of leverage derived from interventions at all levels and in all branches of government. From these and other studies have evolved what we know as the public sector paradigm: public sector collective bargaining is a multilateral process in which labor and management exercise power against one another using political weapons in a political environment.

Although in their pure form the two models of bargaining are offered as parallel constructions, recent evidence suggests that they do in fact have several points of intersection. Multilateral bargaining has been found to exist in the private sector; bilateral bargaining has been observed in the public sector. And both bilateral and multilateral bargaining have been discovered in regulated industries.

The existence of multilateral bargaining in the private sector is very common, even though we often overlook it. Private sector unions have long utilized the political system to effect the bargaining environment. Unions have long advocated laws and subsidies that would benefit their respective industry or membership and sought through political action benefits not easily obtained through negotiations. Acting as interest groups, unions have achieved gains in wages (Davis-Bacon), hours (FLSA), safety legislation (OSHA), and fully-funded and vested pensions (ERISA). Such practices as these, moreover, are not limited to the activities of national unions. For years the local building trades have protected their interest by influencing the content of building codes at the municipal level, and industrial unions have lobbied in state legislatures with respect to unemployment and workman's compensation, child labor laws, and income and transfer payments for strikers.

Likewise we probably overlook a great deal of bilateral bargaining in the

public sector. Considering the bias of researchers toward larger jurisdictions, we may have overstated the extent to which bargaining has been conducted multilaterally. For even in larger jurisdictions, bilateralism can occur. The city of Milwaukee, for example, has rationalized the bargaining process by effectively cutting off the union's access to the city council and forcing bilateral bargaining. Parenthetically, it is interesting to note that police and firefighters in Milwaukee, because of limited home rule statutes, are still able to utilize the state legislature to acquire benefits and influence the structure of bargaining. In Cincinnati one city manager was able to move bargaining from a multilateral to a bilateral process. However, under someone else's leadership, it reverted to a multilateral process.

The characteristics of bargaining in regulated industries are especially interesting. Subject to state or federal government regulation, regulated industries nonetheless engage in collective bargaining under private sector laws. Both bilateral and multilateral bargaining practices have developed, and it is not uncommon for the parties to move between the two modes.

AN OUTLINE OF A GENERIC MODEL

These anomalies in the conceptualization of private and public sector bargaining as parallel models have led us to postulate the existance of a single underlying model of collective bargaining -- one which would properly encompass both sectors, yet one not so general as to be devoid of applicability. To do this, we return to the roots of the industrial relations discipline.

John Dunlop proposed the first generic model of industrial relations. His industrial relations system notion identified the important actors operating in a social, economic and political environment to generate a web of rules which reflected the actors' needs and the conditions under which they operated.

The work of Jack Barbash adds much to our understanding of the actors' behavior in Dunlop's model. Barbash has concluded that the actors are motivated by generic forces which are constant across time, occupation, industries and sectors. Management, Barbash claims, is constrained by cost discipline - that is, the need to produce a product or service within cost constraints or the constraint of scarce resources. Employees, on the other hand, are motivated by security consciousness -- that is, a need for individual security in the job or organization and a need for equity. The union, another actor in this system, is motivated by the employees' needs as well as its own organizational needs for security and survival.

The model just specified is static. Both the motivations of the parties and the conditions in the environment from which parties derive their power are considered exogenous and not subject to change. Nonetheless, the static model does enable us to compare outputs or webs of rules across industries, occupations, and sectors. Doing this, we find that contracts tend to include broadly similar areas of coverage representing the joint and independent needs of the parties, thereby lending some support to the existence of a generic model. Within each of these areas, of course, the level and breadth of benefits will vary. Authors whose work supports this notion include Perry and Wildman; Juris and Feuille; Juris, Maxey, Rosmann and Bentivegna; and the Bureau of National Affairs.

Bargaining of course is not a static process. The bargaining process is mobilized by power considerations. Power as defined by Chamberlain and Cullen and others, is the ability to raise opponent's perceived cost of disagreement relative to his or her perceived cost of agreement. For example, the strike and lockout can be effective weapons only if they impose more costs on one's opponent than they do upon oneself. But actual behavior is not the only method for imposing cost. Threats of actions, or varying perceptions of one's <u>willingness</u> to carry out a threat, and varying perceptions of one's <u>ability</u> to carry out a threat create the possibility

of costs which may affect employer behavior. In this context, then, we can view the strike or strike threat in the public sector as an attempt to impose political costs upon managements negotiators while showing an employee willingness to bear economic and political costs.

Because the availability of power is so important to the outcome, the parties continually search for added power through adjustments in environmental and structural relationships. In the private sector for example, employers have found that multinationalism and conglomerate forms of organizations serve to reduce the union's bargaining power by limiting the union's ability to impose heavy costs. The union, on the other hand, will attempt to make the bargaining unit coterminous with the product market and vertically and horizontally integrate the structure of bargaining so as to match the structure of the firm. In the public sector the union may attempt to lower the costs of agreement by leveraging the negotiations through intensive lobbying of legislative branches of government or by changing the composition of the legislative or executive branches through elective politics.

It is this process of jockeying to take advantage of environmental change that helps explain the simultaneous existence of bilateral and multilateral bargaining in a given industry. Consider the case of the voluntary hospital industry. Where hospitals operate under no cost review and complete ability to pass through costs, the bargaining process tends to be bilateral. Where hospitals face subsequent or prior review of their operational and budgetary decisions, there is an incentive for multilateralism. Other industries, such as airlines, railroads, and public utilities which also have a regulated product market have exhibited similar tendencies for multilateral bargaining in the past.

In summary, while it has been useful to develop separate public and private paradigms during the early years of public sector bargaining, we are now at a point where some synthesis, if intellectually valid, would be useful. We suggect that

such an intellectually valid synthesis can be based largely on the relationship between the environment in which the parties interact and the intent of the parties to maximize their power. The theory presented here holds that the parties will adopt those mechanisms necessary to wrest power from any given environment; and, as that environment changes, so too will the choice of weapons and strategies they use.

THE NORMATIVE DIFFERENCE

We began by saying that those who perceive the public sector to be different from the private sector base their judgement either on differential perceptions of the bargaining process in the public sector or on the normative judgement that the public sector should in fact be treated differently. Indeed there has been an extensive debate on the rights of public sector employees to bargain collectively and to exercise the right to strike. Those who feel that there should be stringent controls on bargaining in the public sector claim that collective bargaining represents two bites of the apple in influencing the allocation of public resources (one through political activity; the second through bargaining). This, it is said, is unfair to the less powerful who are also dependent upon the same public revenues. Supporters of unencumbered collective bargaining in the public sector argue that there are market checks and balances to the goals of unions, that it has historically proved imprudent to legislate against unionization, and that the strike cannot be banned without the support of those who must live under the law.

It is impossible to remove political or normative judgements from a discussion of public sector bargaining. We would note that normative judgements have played significant roles in the formation of private sector labor laws as well. With time and experience, normative judgements change. In the short run, however, they remain an important component in the setting of public policy. But, if our theory is cor-

rect, then policy should reflect the reality of public sector bargaining activity -- namely that employees will organize and choose their strategy on the basis of what works. The law may correct for imbalances in power, but it can not successfully impose upon the parties a major redistribution of power counter to the true underlying power relationship, unless all parties concede to the propriety of such a constraint.

SOME LMPLICATIONS FOR EDUCATION COLLECTIVE BARGAINING

To those primarily interested in education collective bargaining, reaction to this general theory may range from "contrived" to "too abstract". Admittedly it does not capture the timbre of union management relations in this sector, but the test of the theory is its ability to explain behavior. We believe that a general theory may be usefully employed to improve our understanding in the following areas: the role of work stoppages in collective bargaining; the scope of bargaining; the organization of labor relations responsibilities in schools; and the identification of a research agenda for researchers in the area of education collective bargaining.

WORK STOPPAGES

Attitudes towards teacher work stoppages have changed as a result of changes in the economic and political environment of education bargaining. Once teacher strikes were largely viewed as unprofessional and unethical (not to mention illegal) conduct. The prevailing attitudes held that education was a perishable commodity to be consumed on a given day or else lost forever. No acceptable substitutes existed. Moreover, strikes were seen to give the union too much power, and as such were inherently unfair. Parents, unaccustomed to having their children serve as pawns in an economic contest, pressured school boards into acquiescing

and hold elective board members responsible for the strike. In these respects the strike served as a political weapon, imposing political cost in exchange for higher economic benefits. Equally effective in those days was the threat of a strike and the perceived political cost should the union go through with its threat. Another power element favoring the teachers was the need for districts to maintain a required number of instructional days in order to qualify for state aid payments. This limitation placed an upper bound on the likely length of a strike. But it also reduced the teachers' cost of disagreement, since they were eventually paid for the lost time as the days were made up.

Of course all of this took place during the prosperous days of the 1960's in education when the public was quite willing to meet whatever costs were incurred in the new teacher contract. As the environment shifted, and as the public became more fiscally conservative, the balance of power also shifted. Reflecting this shift, school boards became increasingly willing to take a strike. The once unconscionable act now accrued a political benefit to employers: the image of a militant cost cutter fighting to keep costs in line. Particularly interesting is the shift in attitude that has taken place with regard to the relationship between days lost and education. It is now acknowledged that the impact of strikes on the quality of educational services is neither readily apparent nor unquestionably detrimental. (For that matter, neither have snowdays been traced to low educational achievement.) School officials, like many of their private sector counterparts, have come to question,"what price labor peace?".

Thus in the new bargaining environment stiffer bargaining postures by management are more common. Also threats to hire replacements for striking teachers seems to be carried out more often. Perhaps the strongest of the new counter measures is the threatened and actual reduction in force brought on by excessive teacher wage increases. These and other measures have raised the teachers cost of disagree-

ment. Employer bargaining power has also been enhanced by the decline in the demand for teachers and the sluggish economy. The power of teachers unions', although expressed through a political weapon (viz., the strike) has its underpinnings in the economics of the industry. As the general model would predict, teacher unions, to offset the influence of economic forces adverse to their cause, have gotten involved in school finance issues at the local, state and federal levels in an attempt to return to the halcyon days of the 1960's.

THE SCOPE OF BARGAINING

School administrators are properly concerned about the question of who controls educational processes. Such control has generally been viewed in normative terms as constituting a public trust worthy of a vigorous defense. Consequently, efforts have been made in statutes and contracts to draw a clear line between the jointly determined and unilaterally determined aspects of the labor management relationship in schools. Here, as elsewhere, management stoutly defends its prerogatives.

Private sector experience teaches us, however, that prerogatives are based on power. They are not a fixed fund of rights, insensitive to pressures or change. Rather, in practice, prerogatives are determined by the characteristics of the environment. As the environment changes, new sources of power are created and old ones destroyed. Similarly, as the environment shifts, union interests in certain subjects will also ebb and flow.

Consider the question of union interest in the so called professional issue of instructional content and process. While school boards have a strong compulsion to keep the union out of this area, the tendency has been for the scope of bargaining continually to expand, even if at a very slow rate of growth -- a condition one might call "drift". There are several reasons why this might occur. First, the difference between an economic and a professional issue is not as clear in practice

as it is in theory. Equally, the scope of bargaining seems to grow through difficulties encountered in applying a labor agreement to the day to day conduct of work. Moreover, what management takes to be an assult on its prerogatives with respect to professional issues may not be professionally motivated at all, but rather economically motivated. Union interest in class size, for example, may be seen as an attempt to legislate educational policy or, more cynically, as an attempt to legislate employment security. Just as the scope of bargaining may expand, it may also retrench in response to changing environmental conditions and the interests of the actors. Professional issues become salient after basic needs are satiated. Thus the current declining demand for teachers has given teacher unions an understandable recommitment to economic issues.

Parallels to the experience in the private sector are noteworthy. Faced with declining demand in the 1950's, labor and management in several relationships negotiated what were then referred to as creative solutions to handle retrenchment. At the time we considered these special cases. Today we recognize such developments as the mechanization agreement in coal and longshoring or the Armor Automation Fund as logical downside responses.

This tendency for the scope of bargaining to change in response to changing environmental conditions has taken an interesting twist in higher education. Before the advent of unions on college campuses faculty and administrators shared decision-making. Unionized colleges and universities have drawn a three - way distinction among: those issues subject to bargaining; those subject to traditional modes of academic governance; and those subjects left to the prerogative of school administrators. More recently the scope of shared authority through governance is giving way to expansion in the domain of the other two. In this power grab the unions are attempting to influence budgetary priorities and school policies in a much more effective manner. Administrators, faced with a challenge to

their authority in areas of traditional unilateral power, are drawing back control where they can.

These examples to environmental change and reactions to them lead to some helpful insights. For example, negotiators should treat the scope of bargaining as an opportunity set instead of a constraint. The benefits of a maintained prerogative must be evaluated against the cost of maintaining it and the benefit/cost ratios of other portions of the contract. Similarly, prerogatives do in fact grow and shrink; negotiators should be prepared to capitalize on the shifts in power that cause such movements.

If prerogatives are sensitive to shifts in power, a prudent employer would seek to limit drift in the scope of bargaining caused by other sources such as fractional bargaining or excessive use of grievance arbitration. The problem with rights arbitration is that an arbitrator may inadvertently influence the scope of bargaining. Arbitrators usually can see where a union is trying to get something through arbitration it could not get at the bargaining table. Unfortunately arbitrators, like the rest of us, make mistakes.

THE STRUCTURE OF THE INDUSTRIAL RELATIONS FUNCTION

The major structural lesson from the private sector is the need to centralize and professionalize the labor relations function. Where possible specialists should be hired to conduct negotiations and administer contracts. More subtly, private sector experience shows the need to buffer the chief educational officer from negotiations in order to maintain a safety valve.

Not surprisingly, these practices have taken hold in large school districts. Small districts, however, seem to be lagging. One recent survey of labor relations practices in small school districts (smaller than 1000 students) showed that the chief school officer was the staff member most directly involved in collective

bargaining in over 60% of the districts and few, if any, had full time labor relations specialists. These small districts share a problem with small companies: both lack the resources to support a full time specialist.

The private sector has met this problem by establishing industry associations and area wide bargaining. With political realities apparently obviating this solution for small school boards, they must meet the problems as best they can. In the private sector this has led small firms to exchange detailed information on negotiations in order to avoid union whip sawing and to rely on part-time legal and personnel specialists. Small school boards seem to be following the same pattern.

RESEARCH IMPLICATIONS

Granted, the generic theory related above does not add any new methodology to this area of study. It does, however, help us to highlight issues which might become the focus of future research. Several are mentioned below.

We have already referred to the period of "creative collective bargaining" experienced as the private sector attempted to deal with the problems of retrenchment, plant closures, and technological displacement of workers. Each of these problems presented the union with a previously unexperienced dilemma -- higher pay checks or maintenance of membership. As noted, some bargaining relationships managed to institutionalize responses to these downside problems. If, as argued, the public and private sectors share a superordinate bargaining framework, then there are some worthwhile lessons for the education sector in the solutions forged in the private sector.

The theory also underscores the need to improve our understanding of union political action as a bargaining-relevant activity. Instead of studying union activities in such areas as school finance and certification as side issues to

negotiations, research should study these behaviors within the total context of labor-management relations.

The subject of multilateral bargaining also warrants more attention. More studies should be done on the pressures which produce multilateralism and the ways in which the parties adapt to the experience. Of special interest would be studies of the attempts to interject public participation into the bargaining process.

And the field certainly could benefit from some longitudinal studies of a variety of bargaining relationships. Such inquiries would make us aware of the extent to which the structure and process of bargaining are responsive to environmental shifts. The task for researchers is to document the evolution of process and structure and to determine their impact upon the outcomes of bargaining.